

**REMARKS**

This is a full and timely response to the outstanding final Office Action mailed September 15, 2004. Reconsideration and allowance of the application and presently pending claims 1-31, 37 and 39, as amended, are respectfully requested.

1. Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-31, 37 and 39 remain pending in the present application. More specifically, claims 1, 11, 19, 21-22 and 30 are directly amended. The Examiner has withdrawn claims 32-36, 38 and 40-44. These amendments are specifically described hereinafter. It is believed that the foregoing amendments and additions add no new matter to the present application.

2. Response to Restriction of Claims 32-36, 38 and 40-44

a. Claims 32-35

In the Office Action, claims 32-35 are restricted under an allegation that the originally filed claims presented "a method of controlling power consumed by communication devices in a communication system," which is alleged to be distinct from "a method of choosing the proximity of communication devices in a communication system when constructing the communication system." Applicants acknowledge this restriction.

b. Claims 36, 38 and 40-44

In the Office Action, claims 36, 38 and 40-44 are also restricted under the above-described allegation. Applicants acknowledge this restriction and respectfully traverse the restriction for at least the reasons below.

Applicants respectfully point out to the Examiner that claim 36 depends upon independent claim 1, now under examination. Should independent claim 1 be allowed, the restriction against claim 36 should be withdrawn and claim 36 allowed because of its dependency upon independent claim 1.

Similarly, claim 38 ultimately depends upon independent claim 11, claims 40-42 ultimately depend upon independent claim 19, claim 43 ultimately depends upon independent claim 22, and claim 44 ultimately depends upon independent claim 30. Independent claims 11, 19, 22 and 30 are now under examination. Should one of the independent claims 11, 19, 22 and 30 be allowed, the restriction against its respective dependent claim should be withdrawn and the restricted claim allowed because of its ultimate dependency upon an allowed independent claim.

For at least the reasons above, Applicants respectfully request reconsideration and withdrawal of the restriction as applied to claims 36, 38 and 40-44 so that examination of these claims may proceed.

3. Response to Rejection of Claims 1-3, 11, 14, 17, 18, 22, 25, 28-30 and 37 Under 35 U.S.C. §102(e)

In the Office Action, claims 1-3, 11, 14, 17, 18, 22, 25, 28-30 and 37 stand rejected under 35 U.S.C. §102(e) as allegedly being unpatentable by *Amrany et al.* (U.S. Patent 6,711,207), hereinafter *Amrany*. For a proper rejection of a claim under 35 U.S.C. Section 102, the cited reference must disclose all elements/features/steps of the claim. See, e.g., *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

a. Claims 1, 11, 22 and 30

Applicants respectfully submit that independent claims 1, 11, 22 and 30, as amended, are allowable for at least the reason that *Amrany* does not disclose, teach, or suggest the feature “that when said detector detects said packetized digital communication signal and generates said control signal, said transmitter power manager provides power to said at least one element in response to said control signal, said element not having power prior to generating of said control signal” as recited in claims 1, 11, 22 and 30.

The Office Action, at page 3, rejects claim 1 and alleges that *Amrany* discloses “that when the detector detects said packetized digital communication signal and generates said control signal, said transmitter power manager provides power to said at least one

element in response to said control signal [DSP restores transmit power, column 9, lines 34-40].” The Office Action, at pages 4, 5 and 6, uses similar language to reject claims 11, 22 and 30, respectively. For the convenience of the Examiner, the recited portion of *Amrany* is shown below:

If it is determined in step 380 that either transmit or receive bins are in use, DSP 90 may be ***configured to perform a fast retrain*** of the system by transferring to method step 210 (see FIG. 4) as illustrated in step 390. Accordingly, referring back to FIG. 4 the DSL modem continues to perform the remaining steps of a fast retrain with the ***restored, predetermined downstream data transmit power***. (Col. 9, lines 34-40, emphasis added)

Here, the first part of *Amrany* is disclosing the fast retrain when transmit bins are in use. This particular teaching in *Amrany* cannot anticipate any aspect of claims 1, 11, 22 or 30 since these claims do not recite any feature related to a fast retrain.

Then, *Amrany* further discloses that the “modem continues to perform the remaining steps of a fast retrain with the ***restored, predetermined downstream data transmit power***.” Applicants assert that this disclosure is different from providing “***power*** to said at least one element ... said element not having power prior to generating of said control signal” as recited in claims 1, 11, 22 or 30. That is, providing power to an element that did not previously have power, as recited in claims 1, 11, 22 and 30, is not the same as restoring the downstream data transmit power disclosed in *Amrany*.

Thus, *Amrany* does not anticipate claims 1, 11, 22 or 30, and the rejection should be withdrawn.

b. Claims 2-3, 14, 17-18, 25, 28-29 and 37

Because independent claim 1 is allowable over the cited art of record, dependent claims 2-3 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 2-3 contain all features/elements of independent claim 1. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to these claims should be withdrawn.

Similarly, because independent claim 11 is allowable over the cited art of record, dependent claims 14, 17-18 and 37 (which depend from independent claim 11) are

allowable as a matter of law for at least the reason that the dependent claims 14, 17-18 and 37 contain all features/elements of independent claim 11. And, because independent claim 22 is allowable over the cited art of record, dependent claims 25 and 28-29 (which depend from independent claim 22) are allowable as a matter of law for at least the reason that the dependent claims 25 and 28-29 contain all features/elements of independent claim 22. Accordingly, the rejection to these claims should be withdrawn.

Furthermore, with respect to claims 14 and 25, Applicants respectfully submit that claims 14 and 25 are allowable for at least the reason that *Amrany* does not disclose, teach, or suggest the feature of “actuating said transmitter power manager in response to said second control signal such that ***power is removed*** from said at least one element residing in said transmitter unit” as recited in claims 14 and 25 (emphasis added).

The Office Action, at pages 3 and 5, rejects claims 14 and 25, respectively, and alleges that *Amrany* discloses that “power is removed from said at least one element [line driver] residing in said transmitter unit [hybrid, column 8, lines 53-61].” For the convenience of the Examiner, the recited portion of *Amrany* is shown below:

If DSP 90 determines in step 330 that the downstream data transmission has been unused for the prescribed duration, DSP 90 may continue by adjusting performance parameters within xTU-C 47 as illustrated in step 345. For example, the transmit channel power may be ***reduced by decreasing the magnitude of the supply voltage*** provided to the line driver in the hybrid 70. It is significant to note that step 345 is further illustrated with three exemplary functions: 345a, designated, lower transmit power; 345b, designated, decrease the DSP 90 clock rate; and 345c, designated, decrease the DAC and ADC sampling clock rate. Either of the aforementioned functions may be adjusted to decrease power consumption within xTU-C 47. Either of the aforementioned functions will be readily recognized by those skilled in the art, as such, a description detailing how to adjust transmit power and decrease clock rates is not required wherein. (Col. 8, lines 51-67, emphasis added.)

Applicants note that the above portion of *Amrany* is limited to disclosing that transmit channel power may be reduced by decreasing the magnitude of the supply voltage provided to the line driver in the hybrid 70. Removing power, as recited in claims 14 and 25, is not the same as decreasing the supply voltage of the *Amrany* hybrid

70. Thus, *Amrany* does not anticipate claims 14 or 25, and the rejection should be withdrawn for at least this reason alone.

Similarly, Applicants respectfully submit that claim 37 is allowable for at least the reason that *Amrany* does not disclose, teach, or suggest the feature of “powering off said element in response to detecting said absence of said packetized digital communication signal” as recited in claim 37. Powering off an element, as recited in claim 37, is not the same as decreasing the supply voltage of the *Amrany* hybrid 70. Thus, *Amrany* does not anticipate claim 37, and the rejection should be withdrawn for at least this reason alone.

4. Response to Rejection of Claims 4-7, 12, 13, 23, 24, 26 and 27 Under 35 U.S.C. §103

Because independent claim 1 is allowable over the cited art of record, dependent claims 4-7 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 4-7 contain all features/elements of independent claim 1. Accordingly, the rejection to these claims should be withdrawn.

Similarly, because independent claim 11 is allowable over the cited art of record, dependent claims 12 and 13 (which depend from independent claim 11) are allowable as a matter of law for at least the reason that the dependent claims 12 and 13 contain all features/elements of independent claim 11. And, because independent claim 22 is allowable over the cited art of record, dependent claims 23, 24, 26 and 27 (which depend from independent claim 22) are allowable as a matter of law for at least the reason that the dependent claims 23, 24, 26 and 27 contain all features/elements of independent claim 22. Accordingly, the rejection to these claims should be withdrawn.

5. Response to Rejection of Claims 8-10, 19-21 and 39 Under 35 U.S.C. §103

In the Office Action, claims 8-10, 19-21 and 39 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Amrany*, in view of *Helms et al.* (U.S. Patent 6,144,695). Additionally, claim 31 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Amrany*, in view of Applicant's Admitted Prior Art.

a. Claims 19 and 21

It is well-established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981). Applicants respectfully submit that independent claims 19 and 21, as amended, are allowable for at least the reason that *Amrany* does not disclose, teach, or suggest the feature “the transmitter power managers are actuated to enable power to be provided to at least one element residing in each of the respective transmitter units, said element not having power prior to generating of said control signal” as recited in claim 19 or the feature of a “plurality of transmitter power managers such that at least one element residing in said respective transmitter unit is provided power, said element not having power prior to generating of said control signal” as recited in claim 21.

The Examiner is respectfully referred above to the arguments for allowability of claims 1, 11, 22 and 30 which demonstrates that the recited features of claims 19 and 21 are not disclosed, taught or suggested by *Amrany*. It is not alleged that these features are disclosed, taught or suggested by *Helms*. Thus, claims 19 and 21 are not obvious over *Amrany*, in view of *Helms*, and the rejection should be withdrawn.

b. Claims 8-10, 31 and 39

Because independent claim 1 is allowable over the cited art of record, dependent claims 8-10 and 31 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 8-10 and 31 contain all features/elements of independent claim 1. Similarly, because independent claim 22 is allowable over the cited art of record, dependent claim 39 (which depends from independent claim 22) is allowable as a matter of law for at least the reason that the dependent claim 39 contains all features/elements of independent claim 22. Accordingly, the rejection to these claims should be withdrawn.

6. Claims 15 and 16

Applicants note that claims 15 and 16 do not appear to be expressly rejected in the present Office Action. However, because independent claim 11 is allowable over the cited art of record, dependent claims 15 and 16 (which depend from independent claim 11) are allowable as a matter of law for at least the reason that the dependent claims 15 and 16 contain all features/elements of independent claim 11.

**CONCLUSION**

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now 1-31, 37 and 39 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



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